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14 as Trustee of SORENSEN RESEARCH AND
15 DEVELOPMENT TRUST

16 UNITED STATES DISTRICT COURT
17 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

18 JENS ERIK SORENSEN, as Trustee of	) Case No. 08 cv 233 BTM CAB
19 SORENSEN RESEARCH AND)
20 DEVELOPMENT TRUST,	) PLAINTIFF'S OPPOSITION TO
	) MOTION FOR EXTENSION OF
21 Plaintiff	) ANSWER DATE
22 v.)
)
23 GLOBAL MACHINERY COMPANY,	) DATE: April 25, 2008
24 an Australian company; GMCA PTY.	) TIME: 11:00 a.m.
25 LTD., an Australian company;	) Courtroom 15, 5th Floor
26 TRAPONE CORPORATION PTY.	) Hon. Barry Ted Moskowitz
27 LTD., an Australian company; and DOES)
28 1 – 100,	) <i>No Oral Argument Unless</i>
	) <i>Requested by the Court</i>
Defendants.)

SUMMARY OF OPPOSITION

Defendants' Global Machinery Company, GMCA Pty. Ltd., and Trapone Corporation Pty. Ltd. ("Defendants") motion for extension of answer date ("Motion") should be denied because:

1. The Motion fails to identify or establish substantial harm or prejudice if the Court does not extend the deadline to file its responsive pleading. Requiring Defendants to file a responsive pleading in a timely manner does not cause substantial harm or prejudice to the moving party.

2. Failure to require Defendants to file a responsive pleading when due (and, in advance of the motion for stay) prevents Plaintiff and the Court from having information necessary to properly evaluate factors relevant to Defendants' Motion for Stay (Docket #9) scheduled for hearing on April 25, 2008.

3. Defendants' request for stay is not a proper responsive pleading within the requirements of Fed.R.Civ.P. Rules 8 and 12 and thus should not delay the filing of an answer.

FACTUAL SUMMARY

The Complaint for Patent Infringement in this case was filed on February 5, 2008 (Docket #1), and was served on Defendants' registered agents via International Certified Mail on February 22, 2008 pursuant to *Fed.R.Civ.P.* Rule 4 and *California Code of Civil Procedure* § 415.40. Pursuant to statute, the effective date of service when certified mail service is accomplished is 10 days after the date of mailing, or March 3, 2007. The responsive pleading deadline is thus March 24, 2008.

ARGUMENT

I. DEFENDANTS' MOTION FAILED TO IDENTIFY OR ESTABLISH GOOD CAUSE FOR EXTENSION OF TIME AS REQUIRED BY CIVIL L.R. 12.1.

1 According to Civil Local Rule 12.1, extensions of time for answering, or
2 moving to dismiss a complaint shall only be secured by obtaining the approval of a
3 judicial officer, who shall base the decision on a showing of good cause.

4 Having failed to show a good cause for an extension of time, Defendants
5 motion should be denied.

6
7 **II. A FAILURE TO FILE A RESPONSIVE PLEADING PRIOR TO**
8 **BRIEFING ON THE MOTION FOR STAY DENIES PLAINTIFF AND**
9 **THE COURT INFORMATION ESSENTIAL TO RULING ON THE**
10 **MOTION FOR STAY.**

11 Courts are not required to stay judicial proceedings pending reexamination of
12 a patent. *Nanometrics, Inc. v. Nova Measuring Instruments, Ltd.*, 2007 WL 627920,
13 at *1 (N.D.Cal. Feb. 26, 2007).

14 In determining whether to grant a motion for stay pending reexamination, the
15 court must weigh the competing interests presented by the specific set of facts. *Jain*
16 *v. Trimas Corporation*, 2005 WL 2397041, at *1 (E.D.Cal. Sept. 27, 2005); *Gladish*
17 *v. Tyco Toys*, 29 1993 WL 625509, 29 U.S.P.Q.2d 1718, 1719 (E.D.Cal. Sept. 16,
18 1993).

19 One of the factors to be considered is whether a stay will simplify the issues in
20 question and trial of the case. *Predicate Logic, Inc. v. Distributive Software, Inc.*,
21 Case No. 01cv1951, Doc. #126 at pp. 2 (S.D. Cal. Nov. 14, 2002) (Moskowitz, J.,
22 presiding), citing to *Xerox Corp. v. 3Com Corp.* 69 F.Supp.2d 404, 406-7 (W.D.N.Y.
23 Feb. 18, 1999).

24 Plaintiff cannot effectively argue, and the Court cannot properly evaluate this
25 factor, if Defendants avoid identifying what matters are at issue between the parties
26 by failing to answer the Complaint. Until an answer is filed, the Court has no basis
27 for assuming that there are ANY factual issues in dispute.
28

1 Defendants should be required to answer the Complaint in advance of hearing
2 on the motion for stay and thus, this request for extension of answer date should be
3 denied.

4
5 **III. DEFENDANTS' MOTION FOR STAY IS NOT A PROPER**
6 **RESPONSIVE PLEADING TO THE AMENDED COMPLAINT.**

7 Federal Rules of Civil Procedure Rules 8 and 12 describe the various types of
8 pleadings to be filed by the parties upon commencement of a lawsuit. Rule 12, in
9 particular, outlines all the responsive pleadings that a party can file to a complaint,
10 including an answer and the various motions under Rule 12(b). A motion to stay
11 pending reexamination is not a motion that satisfies the requirement for answering or
12 otherwise responding to a complaint provided under Fed.R.Civ.P. Rule 12.

13 Defendants want to engage in motion practice before it has stated its position
14 in routine initial pleadings, but in a manner not authorized by Rule 12. Because the
15 motion for stay is not a motion delaying the obligation to respond to a complaint
16 under Rule 12, the responsive pleading deadline should not be modified.

17 **CONCLUSION**

18 Defendants' motion for extension of answer date should be denied because
19 there is no substantial harm or prejudice that would accrue to Defendants if the Court
20 does not extend the deadline to file its responsive pleading. Requiring Defendants to
21 file a responsive pleading in a timely manner does not cause substantial harm or
22 prejudice to the moving party.

23 Furthermore, allowing Defendants to further postpone the filing of a
24 responsive pleading when due (and, in advance of the motion for stay) denies
25 Plaintiff and the Court from evaluating factors relevant to the motion for stay,
26 specifically, whether the requested stay would simply issues for trial.

1 Finally, Defendants' motion for stay is not a proper responsive pleading within
2 the requirements of Fed.R.Civ.P. Rules 8 and 12, and thus the delay in answering a
3 complaint allowed under Rule 12 should not be applied in this case.

4
5 DATED this Friday, March 21, 2008.

6
7 JENS ERIK SORENSEN, as Trustee of
8 SORENSEN RESEARCH AND DEVELOPMENT
9 TRUST, Plaintiff

10 /s/ Melody A. Kramer

11 J. Michael Kaler, Esq.

12 Melody A. Kramer, Esq.

13 Attorney for Plaintiff
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PROOF OF SERVICE

I, Melody A. Kramer, declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kramer Law Office, Inc., 9930 Mesa Rim Road, Suite 1600, San Diego, California, 92121.

On Friday, March 21, 2008, I served the following documents:

PLAINTIFF'S OPPOSITION TO MOTION FOR EXTENSION OF ANSWER DATE

PERSON(S) SERVED	PARTY(IES) SERVED	METHOD OF SERVICE
THOMAS W. FERRELL, ESQ. tferrell@higgslaw.com HIGGS, FLETCHER & MACK LLP 401 West "A" Street, Suite 2600 San Diego, CA 92101-7913	Global Machinery Company; GMCA Pty. Ltd; Trapone Corporation Pty Ltd.	Email - Pleadings Filed with the Court via ECF
MARK G. KACHIGIAN mkachigian@hjkllaw.com CASSANDRA L. WILKINSON cwilkinson@hjkllaw.com HEAD, JOHNSON & KACHIGIAN, P.C. 228 West 17th Place Tulsa, Oklahoma 74119	Global Machinery Company; GMCA Pty. Ltd; Trapone Corporation Pty Ltd.	Email - Pleadings Filed with the Court via ECF

- ☐ (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.
- ☐ (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.
- ☐ (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.
- ☐ (Email) I emailed a true copy of the foregoing documents to an email address

1 represented to be the correct email address for the above noted addressee.

2 ☒ (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed
3 this document via the CM/ECF system for the United States District Court for the
4 Southern District of California.

5 ☐ (U.S. Mail) I mailed a true copy of the foregoing documents to a mail address
6 represented to be the correct mail address for the above noted addressee.

7 I declare that the foregoing is true and correct, and that this declaration was executed on
8 Friday, March 21, 2008, in San Diego, California.

9 /s./ Melody A. Kramer

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Melody A. Kramer